

**EMPLOYMENT APPEALS BOARD DECISION**  
**2014-EAB-0745**

*Affirmed*  
*Disqualification*

**PROCEDURAL HISTORY:** On March 24, 2014, the Oregon Employment Department (the Department) served notice of an administrative decision concluding claimant voluntarily left work without good cause (decision #83825). Claimant filed a timely request for hearing. On April 21, 2014, ALJ R. Davis conducted a hearing, and on April 25, 2014 issued Hearing Decision 14-UI-16189, affirming the Department's decision. On May 1, 2014, claimant filed an application for review with the Employment Appeals Board (EAB).

**FINDINGS OF FACT:** (1) Home and Rentals employed claimant from June 27, 2008 to March 4, 2014 as an apartment manager.

(2) In April 2013, claimant injured her knee while at work, and experienced knee pain after that time. The building where claimant worked had two stories and no elevator. Claimant used the stairs daily while working. Claimant was able to walk up and down stairs slowly, but could not do it often or without experiencing pain. As a result of her injury, the employer reduced the number of hours claimant worked per day.

(3) Claimant was dissatisfied with the work performance of the employer's maintenance man. He sometimes did not return claimant's telephone messages, or complete requested repairs for more than a month. Claimant complained to the employer about the maintenance man. The owner told claimant he would discuss claimant's concerns with him. The maintenance man's performance did not improve. Claimant felt stress because it took so long for the maintenance man to complete repairs to the apartments she managed.

(4) In January 2014, the employer hired a new employee to assist claimant with her job duties. Claimant did not always get along with the new employee. The new employee sent claimant a text message that stated, "You're so rude. No wonder nobody wants to work with you." Audio Record ~ 13:33 to 13:37. She sent claimant another text message stating, "Don't talk down to me. You're not my boss. I don't take directions from you." Audio Record ~ 13:40 to 13:46. Another of the employee's text messages stated, "Eat me." Audio Record ~ 13:10 to 13:23. Claimant complained to the owner

about her communication problems with the new employee. The owner recommended ways claimant could improve her communication with the coworker. Claimant was not satisfied with the owner's response.

(5) During February 2014, claimant began to experience stomach pain, nausea and vomiting. She sought medical treatment, and her doctor prescribed anti-nausea medication and recommended eating bland foods.

(6) On approximately February 25, 2014, claimant gave the employer notice she would end her employment in two weeks. Claimant quit work on March 4, 2014.

**CONCLUSIONS AND REASONS:** We agree with the ALJ that claimant voluntarily left work without good cause.

A claimant who leaves work voluntarily is disqualified from the receipt of benefits unless she proves, by a preponderance of the evidence, that she had good cause for leaving work when she did. ORS 657.176(2)(c); *Young v. Employment Department*, 170 Or App 752, 13 P3d 1027 (2000). "Good cause" is defined, in relevant part, as a reason of such gravity that a reasonable and prudent person of normal sensitivity, exercising ordinary common sense, would have no reasonable alternative but to leave work. OAR 471-030-0038(4) (August 3, 2011). The standard is objective. *McDowell v. Employment Department*, 348 Or 605, 612, 236 P2d 722 (2010). Claimant had knee pain, a permanent or long-term "physical or mental impairment" as defined at 29 CFR §1630.2(h). A claimant with that impairment who quits work must show that no reasonable and prudent person with the characteristics and qualities of an individual with such impairment would have continued to work for her employer for an additional period of time.

Claimant testified that she left work, in part, because she was unable to do her job due to knee pain. Audio Record at ~ 7:13 to 7:52. Claimant injured her knee in April 2013 and was subsequently unable to go up and down stairs without pain, which she did daily as part of her job. However, claimant did not assert, and the record does not show, that she asked the employer to modify her job duties so that she was not required to use the stairs. Claimant did not show her knee injury limited her ability to work in any other way that was not already addressed by her reduced work schedule. Rather than quit her job, claimant had the reasonable alternative of requesting additional accommodation from the employer. A reasonable and prudent person with the characteristics and qualities of an individual with claimant's impairment would have informed the employer of her need to avoid using stairs and given the employer an opportunity to accommodate her, rather than quit before verifying if the employer was willing to do so. The employer had modified claimant's schedule to accommodate her knee limitations, and had hired a new employee to assist her. There is no evidence in the record that the employer was unwilling to provide additional accommodation. Accordingly, claimant failed to show that it would have been futile for her to have asked the employer for assistance.

Claimant testified at hearing that she left work, in part, due to the way her coworkers treated her. Audio Record ~ 7:13 to 7:52. Claimant was dissatisfied with the maintenance worker because she had difficulty contacting him, and because he often failed to return her telephone messages or respond to repair requests for weeks or months. Audio Record ~ 10:16 to 10:49. Claimant complained to the owner about the difficulty she had communicating with the maintenance man, but the maintenance

man's performance did not improve. Audio Record ~ 10:51 to 10:57. Claimant also testified at hearing that the new employee hired to assist claimant with her duties was rude to her on the telephone and sent her rude text messages. Audio Record at ~ 11:23 to 11:50. Claimant showed that some of the text messages were rude. Although claimant established that her coworkers were rude and difficult to communicate with, she did not allege her coworkers yelled at her, used foul language toward her, called her names, or threatened her with physical harm. Claimant failed to establish that her coworkers' behavior was such that no reasonable and prudent person would have continued to work for her employer for an additional period of time. Moreover, although claimant was experiencing stomach symptoms she attributed to work stress, the record does not show that her work environment or medical condition was so severe as to leave her with no reasonable alternative but to quit work when she did.

We conclude claimant quit work without good cause. Thus claimant is disqualified from the receipt of unemployment insurance benefits based on this work separation.

**DECISION:** Hearing Decision 14-UI-16189 is affirmed.

Susan Rossiter and J. S. Cromwell;  
Tony Corcoran, not participating.

**DATE of Service:** June 5, 2014

**NOTE:** You may appeal this decision by filing a Petition for Judicial Review with the Oregon Court of Appeals within 30 days of the date of service listed above. *See* ORS 657.282. For forms and information, you may write to the Oregon Court of Appeals, Records Section, 1163 State Street, Salem, Oregon 97310, or visit the website at <http://courts.oregon.gov/OJD/OSCA/acs/records/AppellateCourtForms.page>.

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